

89-140

Supreme Court, U.S.

FILED

JUL 22 1989

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NEELAM RAJPUT,
Petitioner,

v.

SUKHJIT RAJPUT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
SECOND APPELLATE DISTRICT

CHESTER LEO SMITH
COUNSEL OF RECORD
12121 Wilshire Blvd., #1103
Los Angeles, CA 90025
(213) 476-6486
(ASSOCIATE COUNSEL: ANN SMITH)



Questions Presented

(1) Primary Question: Should United States Courts apply the laws of India (subordinating women to men in matters of guardianship and child custody) to a female United States citizen.

(2) Where an Indian husband and wife legally entered the United States in the 1970's (and both parents and children had the status of permanent residency from 1979 on and at time of trial and both parents are now United States citizens) but left their two minor children (now 15 and 12) in India with the husband's relatives for what the Court of Appeal stated were "economical" reasons, is it a denial of the rights of the minor children, and a denial of the rights of the natural mother, under

Article XIV (equal protection and due process), and under concepts of international comity and courtesy, for the Courts of California to hold:

(A) That said natural children of two United States citizens (permanent residents of the State of California) should be subject only to the laws of India (where a female parent is subordinate in legal status to the male parent) because California was held to have no subject matter jurisdiction to make any in personam order to either natural parent as to custody or visitation or support of these natural children since the natural children were in India and not physically present in California.

(B) That the Courts of the United States have no obligation of comity or due

process or courtesy even to send notice (of these California proceedings by a natural mother re custody) to a known Indian Court (the District Court in the large Indian city of Amritsar) where "child custody proceeding[s are] being conducted . . . by husband's sister" [A-3 to 7] even though a motion by the natural mother so to take judicial notice and notify the Indian Court was made to (Page A-33) (and denied by) both the Trial Court and Court of Appeal, both of which Courts had the Indian case title and number and Indian Court address.

(C) That a California Court has the right (because it decides it has no subject matter jurisdiction) to vacate that portion of a 1981 final divorce judgment (to which the natural parents were parties) wherein

the California court (pursuant to written agreement of the parties) assumed jurisdiction over the parties and the minor children in India and awarded visitation rights to the mother.

(D) That a California Court has the right to dissolve ex parte restraining orders and lis pendens [issued at the request of the natural mother/wife upon real and personal property of the natural father/husband to secure the availability of monies for any court orders for child support and travel and litigation expenses (including legal expenses in India and to transport the children to the United States)] solely because the Court found the property was the separate property of the natural father - and so as a result the California Courts lose jurisdiction over

the only assets available to Court order to permit payment of travel and litigation costs of the children and mother in India.

II. LIST OF PARTIES

Petitioner is Neelam Rajput.

Respondent is Sukhjit Rajput.

Their two children are:

SUNIL, a son, born September 15, 1974.

HARISH, a son, born November 7, 1977.

Courts are:

The Supreme Court of California.

The Court of Appeal of the State of California (Second Appellate District).

The Superior Court of the State of California (Los Angeles).

District Court/of Hon. Shri Mandair/Amritsar/India.

TABLE OF CONTENTS

| <u>Cases</u> | <u>Page</u> |
|-------------------------------|---|
| QUESTIONS PRESENTED | i |
| LIST OF PARTIES | v |
| TABLE OF CONTENTS | vi |
| TABLE OF AUTHORITIES | ix |
| OPINION BELOW (at A-13-33) | 2 |
| JURISDICTION | 2 |
| CONSTITUTIONAL PROVISIONS | 3 |
| STATEMENT OF THE CASE | 3 |
| REASONS FOR GRANTING THE WRIT | 26 |
| CONCLUSION | 29 |
| APPENDIX A INCLUDES: | |
| A-1 | Order of Superior Court of California, of May 23, 1989. Denied Petition for Review. |
| A-2 | Order of Court of Appeal, of Mar 21, 1989. Denied Petition for Rehearing. |

- A-3 ORDER OF DISTRICT COURT OF
AMRITSAR, THE PUNJAB, INDIA. HONORABLE
JUDGE SHRI H. S. MANDAIR. DATED: OCTOBER
29, 1985. (UNDER SECTION 8. HINDU
MINORITY AND GUARDIANSHIP ACT.)
- A-8 Request for the Taking of Judicial
Notice of Laws of India (to Trial Court)
- A-13 Decision of Court of Appeal (2nd
Appellate District) (Division Two). Filed
March 2, 1989.
- A-34 Judgment of Superior Court. Filed
March 11, 1986.
- A-40 Statement of Decision (Findings)
of Trial Court Filed March 11, 1986.
- A-62 Interlocutory Judgment (of
Divorce). Dated September 16, 1980.
- A-65 Agreement of September 12, 1980 of
Parties re Custody and Visitation.
- A-66 Final Decree (of Divorce).

February 21, 1981.

A-67 Order Dissolving Restraining
Orders of June 6, 1985.

A-70 Amendment XIV. Section 1.

APPENDIX B INCLUDES:

Uniform Child Custody Jurisdiction Act.
Sections 5150 to 5156.

TABLE OF AUTHORITIES

| | <u>Page</u> |
|---|-------------|
| <u>Constitution of the United States</u> , 2, 3 | |
| Amendment XIV. Section 1. | |
| <u>Statutes</u> | |
| State of California Civil Code: | 2, 9, |
| Sections 5150 to 5156 (Uniform | 11, 13, |
| Child Custody Jurisdiction Act) | 14, 16, |
| | 22 |
| California Civil Code Section | 27 |
| 4600 | |
| <u>Cases</u> | |
| <u>Stanley v. Illinois</u> , (1972) | 20, 28 |
| 405 U.S. 645, 92 S.Ct. 1208, | |
| 31 L.Ed.2d 551 | |
| <u>Publications:</u> | |
| 1. <u>All India Reporter, Ltd., Civil and</u> | |
| <u>Criminal</u> , 4th Edition, V. R. Manohar, | |
| Advocate, W. Ohitaley, LL.B., Vol. XX. | |

2. Principles of Hindu Law and Statutory Enactments, Annotated, 4th Edn., 1970, Volume II, M.N. Srinivasan.

3. Introduction to Modern Hindu Law, Duncan M. Derrett. Oxford Press, 1963.

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NEELAM RAJPUT,
Petitioner,

v.

SUKHJIT RAJPUT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
SECOND APPELLATE DISTRICT

Petitioner Neelam Rajput respectfully prays
a writ of certiorari issue to review the
decision filed March 2, 1989 (A13 to 33) of
the Court of Appeal of the State of

California (Second Appellate District) (Division Two) affirming a Judgment of 3/11/86 of the Superior Court of Los Angeles County of the Honorable Leonard S. Wolf, Judge. A Petition for Rehearing to the Court of Appeal was denied March 21, 1989 (A-2). Petition for Review to the Supreme Court of the State of California was denied on May 23, 1989 (A-1).

OPINION BELOW

There was an opinion of the Court of Appeal (A-13 to 33). There was no opinion of the Supreme Court of California.

JURISDICTION

Jurisdiction is invoked under Article XIV, of the United States Constitution (A-68). Also: Issue of International Comity under Uniform Child Custody Jurisdiction Act. (Appendix B.)

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Article
XIV, Section 1.

STATEMENT OF THE CASE

[See Statement of Decision: A-40 to
61.]

On 10/12/72 NEELAM and SUKHJIT married
in India. Both were born in India.

On 9/15/74 a son, SUNIL, was born in
India. On and about 1975 SUKHJIT came to
the United States (to California). NEELAM
remained in India with SUNIL. SUKHJIT
returned semi-annually. On 11/7/77 a son,
HARISH, was born in India.

SUKHJIT became a permanent resident -
then [through SUKHJIT] NEELAM and the two
children achieved permanent residency
status by 1980. Both NEELAM and SUKHJIT
were citizens of the United States by 1989.

In 1979 NEELAM and the child SUNIL joined SUKHJIT in the United States. The child HARISH remained in India.

On 7/18/79 NEELAM and SUKHJIT rented an apartment at 4316 Berryman Avenue, Los Angeles, California. NEELAM went to work.

In March 1980 SUKHJIT filed Petition for Dissolution No. D 017535, alleging a date of separation of July, 1979. The Divorce decree (A-62) was by default. The decree (per Agreement) (A-65) awarded custody to SUKHJIT and reasonable visitation rights to NEELAM.

The child SUNIL was sent to India in 1982. The child HARISH never came to the United States.

From 1979 through 1984 the parties filed joint income tax returns each year.

In May, 1983 SUKHJIT purchased a

condominium taking title as "...an unmarried man..." (A-45)

In September, 1984, SUKHJIT moved from 4316 Berryman.

NEELAM has had no word, either by telephone, mail or otherwise from either child since August, 1984 and to date.

NEELAM filed a Petition for Dissolution on March 26, 1985 (WED 45665).

On 3/26/85 NEELAM obtained TEMPORARY ORDERS from Judge Raymond Choate, restraining the sale of the condominium, restraining the removal of any monies from any bank accounts, and ordering that the children be returned from India forthwith.

Upon service thereof on SUKHJIT, his attorney wrote to NEELAM'S counsel stating that a 1980 Dissolution (D017535) had been filed, and a final decree entered

in 1981.

On 4/11/85 SUKHJIT filed a MOTION TO QUASH Service of Summons in the action filed by Neelam and for dissolution of the TEMPORARY RESTRAINING ORDERS.

On 4/15/85 NEELAM filed Civil Action WEC 093884 alleging extrinsic fraud in the obtaining of the 1980-81 divorce.

On June 6, 1985 (A-67), the court denied NEELAM'S MOTION FOR PRELIMINARY INJUNCTION; and dissolved the restraining orders on the bank accounts, and vacated the ORDER of Judge Choate to Sukhjit to bring the children to the United States; and consolidated the three cases under WED 045665.

The only existent asset is the 50% interest in the condominium (A-45) (still under lis pendens). [In 1989 SUKHJIT filed

a Chapter VII Bankruptcy (Court of Appeal records show notice to the Court of Appeal of a stay order issued in the Chapter VII proceeding)].

The consolidated cases were tried in late 1985. This appeal is from the Judgment entered 3/11/86 (A-34 to 39). (Findings at A-40 to A-61).

Relevant portions of the judgment are:

"4. The 1980 Dissolution action Case No. D 17535, filed March 18, 1980 and the subsequent Final Judgment of Dissolution is valid."

"5. The Interlocutory Decree in this Dissolution action, case No. D 17535 is modified to provide for the reservation of jurisdiction to award spousal support."

"6. Neelam Rajput's Order to Show

Cause re Spousal and Child Support, Custody, Visitation, Attorneys Fees and Injunctive Relief, Filed August 5, 1985, under the consolidated Case No. WED 45665, is treated as a modification of the existing dissolution, Case No. D 17535, and the court makes the following orders:

"(a) Sukhjit Rajput is ordered to pay as and for spousal support, the sum of \$250.00 per month, commencing January 1, 1986, . . . [Nothing was ever paid.]

"(b) As and for additional spousal support, Sukhjit is ordered to make available to Neelam Rajput, a sum not to exceed \$5,000.00 for the sole purpose of providing her with transportation to and from India, maintenance in India, and the retaining of counsel in India to represent her interests in the guardianship

proceedings affecting her children. The court reserves jurisdiction to determine the time and manner of payment of said amount. . . . [Nothing was ever paid.]

"(d) This Court has no jurisdiction pursuant to Civil Code Section 5152 to make a child custody and visitation determination as respects the minor children of the parties.

"(e) The provisions in the Interlocutory Decree of September 16, 1980 purporting to award custody of the minor children to Sukhjot Rajput, with reasonable visitation rights to Neelam Rajput, is void and of no force and effect. . . ."

Relevant Findings of the Statement of Decision (A-40 to 61) are:

"13. The testimony of the parents is

in conflict as to the desires of the children. Neelam says the children want to come to the United States. Sukhjit states that the children desire to remain in India. The living conditions of the children in India, their education, friends, and activities are all totally unknown to the court. Neelam and Sukhjit have resided in California since 1979.

"14. The issue as to whether or not the children should reside in Los Angeles is not properly before this court in that it turns upon the court's ability to resolve said conflict, for which it has no jurisdiction on the following basis:

"(a) As respects the issue of child custody, both minor children reside in India with their aunt (Sukhjit's sister) and grandparents. The older child, Sunil,

was in the United States for a few months during the year 1979. The custodial aunt in India has apparently instituted guardianship proceedings in India, the exact nature of which is unknown to the court.

"(b) The court concludes that India is the home state of the children within the meaning of Civil Code section 5152 and that neither child has any significant connection with this state. The fact that both parents reside in California is sufficient to establish that the parents have a significant connection with this state. Civil Code section 5152, subsection (1) (b) [Uniform Child Custody Jurisdiction Act], [Appendix B] requires that either child and his parents, or the child and one of the contestants have a significant

connection with this state. Thus the fact that the parents have a significant connection with the state is insufficient to meet the statutory requirement.

"(c) India is the forum which would provide the optimum access to relevant evidence concerning the children and their family and it would therefore be in the best interests of the children that custody be determined in India. The India court has access to the children, can make an appropriate evaluation of their living conditions and can best determine whether the children would be better served to have custody removed to their parents in the

United States.^{1/}

"(d) For the reasons above stated, jurisdiction of this court to determine custody has not been established. Even if it were established, this court would not exercise its jurisdiction pursuant to Civil Code section 5156, subsection (3) (a), (b), and (c).

"(e) At the time Sukhjit filed his dissolution action in March, 1980, and at the time of the default hearing in September, 1980, the Court had no

^{1/} Neither the Trial Court or the Court of Appeal contacted the Indian Court to determine if any such proceeding was held or to be held. Both Courts refused to take judicial notice of the Indian proceeding. See Footnote Four at A-33.

jurisdiction pursuant to Civil Code section 5152 to make a child custody determination as respects the minor children of the parties. Neither the child custody agreement entered into by the parties, nor Sukhjit's petition to the Court for an award of custody could cause or did cause the Court to acquire such jurisdiction. The provision in the Interlocutory decree of September 16, 1980, purporting to award custody of the minor children to Sukhjit, with reasonable visitation rights to Neelam is void and of no force and effect. . . .

"17. Since this court declines to exercise jurisdiction over the issue of child custody, it is not necessary to address the issue of whether Sukhjit should be ordered to bring the minor children to the United States.

"18. The court cannot determine what is meant by "regular monies" with regard to the support of the minor children. For the reasons stated in paragraph 14, supra, the court cannot determine this issue. However there was testimony that both parties sent money to India for support of the minor children.

"19. Since a basis for this court to exercise jurisdiction over the issue of child custody has not been established nor accepted by the court, it is not necessary to address the issue of whether or not Neelam is a fit mother. However, the court notes that both Neelam and Sukhjit appear to be fit and proper persons to have custody of the children. . . .

"38. The court declines to speculate as to appropriate custodial orders it would

have made if it had accepted jurisdiction, as this issue is moot. . . ."

The Petitioner argued to the Supreme Court of California in her Petition for Review:

"1) Appellant and the minor children have the right to have custody and visitation issues considered in the country of the parents' permanent residency so that appropriate orders may be directed in personem to the natural parents particularly where the natural parents are not subject to the orders of the courts of the locale of the children.

". . . . The Court based its assertion that India was the proper forum on Civil Code Section 5150, that "... litigation concerning the custody take place

ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state. . ."

(Emphasis added.)

"The courts cannot construe the word "family" to refer only to relatives and to exclude the parents of the child. The Court found that both Appellant Mother and Respondent Father were fit parents. They should be regarded as the "family" to which the Code refers.

"The closest connection the family (parents and children) has is to the United

States. At the time of trial the parents were Permanent Residents, father having lived here since 1974, the Mother having lived here since 1979. Since trial, both are American citizens.

"The court erred in using the childrens' residence as the determining factor as to where their care, protection, training and personal relationships is most readily available. Such a yardstick is clearly prejudicial to the Mother. Inter alia, it ignores the fact that the children were in the exclusive custody of Appellant Mother in India from their birth until 1979 (the younger child) and 1980 (the older child). . . .

"The Appellate court found that after both parents and the older son located here, the older son was sent back to India;

". . .Respondent father made a number of trips to India; although the wife, for financial reasons, has not been able to accompany him. Moreover, wife has had little telephonic communication with the children because husband's family does not have a phone. . ."

"Using the childrens' residence to determine jurisdiction precludes Appellant from any ability to maintain a relationship with them. The court established that Appellant does not have the financial means to go to India, and the husband's family in India does not have a telephone. Jurisdiction in India denies Appellant of any means to alleviate this situation. . .

"Once the parents are determined fit, since their closest conection is to the United States, all significant evidence

concerning the care, protection, training and personal relationships would be most readily available here.

"The India Court has no information concerning the parents. Only a California court has access thereto. To find that said information lies only where non-parents live compels jurisdiction in India, and unfairly ignores the fact that the parents, being found fit, would provide fit parental care for the children in California. . . .

[Compare: Stanley v. Illinois, (1972 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551, where it was held that if Petitioner Stanley is a fit person, the goals of the state law are not achieved by separating him from his children. (92 S.Ct. 1213 1214, 31 L.Ed.2d 559.) And the convenience of procedure by presumption rather than

proof cannot justify refusal of a hearing to a father on the substantial interest in custody of his children. (92 S.Ct. 1215, 31 L.Ed.2d 561.) In Rajput, the decision below separates two "fit" parents from their children and without a hearing.]

"2) Appellant has a right to have an appropriate order for child support made in California where the father of the minor children resides so as to enable appellant mother to maintain a parent/child relationship.

". . . the Court found that Appellant is not financially able to go to India. Said finding requires a child support Order to enable regular visitation of the Mother to India, if the Court denies her the right to have custody/visitation determined here.

"3) Appellant has a right to have the trial court or the appellate court contact the India court concerning these custody/visitation proceedings

"Civil Code §5155 (2) requires the Court make inquiry to appropriate officials in another state if there is reason to believe proceedings are pending in another state;

"Civil Code §5155 (3) requires the Court to stay proceedings/communicate with the foreign jurisdiction where proceedings are pending before determining the appropriate forum.

"The Trial Court and the Appellate Court failed to follow the mandate of the above sections, thereby seriously prejudicing Appellant, in that said contact may have caused a different result in the

ruling herein appealed. . . .

"The issue of law is of great importance, when one considers the extensive pattern of immigration which has occurred and continues to occur today, with parties following very similar migratory patterns as we see here: The Father arrives as a Permanent Resident, becomes established, sends for his wife and older child. The objective usually is to reunite the entire family,-- as the remaining children, and often the grandparents and other relatives join them.

"But the Court cannot allow a precedent wherein this pattern is used to break the Mother/child relationship for no reason other than it being cheaper to maintain the children in the old country than to maintain them in the United States,

or to use this means to divorce a spouse and still escape the allocation of rights the United States requires. . ."

The findings of the Trial Court (A-40 to 61) quoted above show clearly Neelan repeatedly raised and briefed the basic Constitutional and comity issues from the start.

The key wording in the Court of Appeals decision is in the final paragraph followed by the total contradiction of Footnote Four. Thus:

Final Paragraph (A-29 to 30).

"In the final analysis, no amount of extra funding would have benefited wife's California legal proceedings to secure custody of her children living in India. Simply put, the children have insufficient contacts with this jurisdiction to confer

subject matter jurisdiction. The proper forum for determining child custody is, and always has been, the courts of India. The judgment is affirmed."

[The paragraph assumes any "forum" of India is being used to determine the custody interests of these children of United States citizens.]

Footnote Four states:

"At trial, wife made a motion to the court requesting that it take judicial notice of child custody proceedings being conducted in India by husband's sister. The court denied the motion. On appeal, wife has made a motion to us for the same request. We also deny the motion."

The Trial Court and Court of Appeal thus then refused to ascertain if the "forum" of India was in fact being used to

determine any interests of the children. By so refusing to take judicial notice, both India and the United States remain ignorant of what the other has done - in fact the Indian Court could have finally held only the United States could act (because it had jurisdiction over the parents.) The children have been denied their Constitutional right, timely raised by Neelam, to have the United States Courts give notice to the Indian Court.

REASONS FOR GRANTING THE WRIT

(1) Should United States Courts apply the laws of India (subordinating women to men in matters of guardianship and child custody) to a female United States citizen.

The Trial Court was requested to take Judicial Notice of the laws and statutes of India (A-8 to 12).

The cited texts show clearly that the "father is the natural guardian of the minor's person . . . and in his absence the mother fulfills that role." (Chapter 10, Sec. 3, Principles of Hindu Law . . .)

The laws of India thus give clear priority to the father - whereas the laws of California give no preference between the sexes (compare California Civil Code Section 4600 stating only that "Custody should be awarded . . . according to the best interest of the child . . .")

A key to the proceedings in India is the appearance of the father before the Indian Court - and the conclusion the Court is accepting the father's nomination as Guardian of the father's sister, Raj Kumari Varma - and thus the Indian Court is accepting the accusation (A-5) the children

were born "out of wedlock" and impliedly the absent Neelam then is presumed to be "unfit". (Compare: Stanley v. Illinois, supra.)

The reality is that the California Courts denied children who are permanent residents of the United States (and the natural mother) any Constitutional protection whatsoever, even though both parents were subject to direct in personem orders of the California Courts.

2) Re: The holding the California Courts do not have in personem jurisdiction over California residents (and natural parents) because the children are outside the United States.

If the United States does not have jurisdiction over the parents, and India does not - and neither country talks to the

other - neither country can hold the parents to any standard of responsibility to their children.

3. Re: The failure to give notice to the Indian Court of the proceedings in California.

Years ago, the Courts of California should have transmitted to the known Indian Court the interest of this California mother in her children.

An opportunity was lost for two great countries to exchange the contemplations of fellow judicial officers. In fact any communication whatsoever, even now, might so please the recipient judicial officer in India that an earnest effort might then be made, in India, at least to see to a renewal of communication between parents and child.

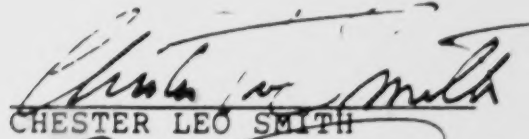
CONCLUSION

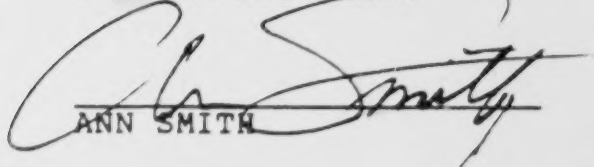
A writ of certiorari should issue to review the judgment of the Court of Appeal of the State of California. This Court is also requested to give notice to:

The Honorable Shri H. S. Mandair

The District Court, Amritsar, India

Respectfully submitted,


CHESTER LEO SMITH


ANN SMITH

APPENDIX A

APPENDIX A INCLUDES:

- A-1 Order of Superior Court of California, of May 23, 1989. Denied Petition for Review.
- A-2 Order of Court of Appeals, of March 21, 1989. Denied Petition for Rehearing.
- A-3 ORDER OF DISTRICT COURT OF AMRITSAR, THE PUNJAB, INDIA. HONORABLE JUDGE SHRI H. S. MANDAIR. DATED: OCTOBER 29, 1985. (UNDER SECTION 8. HINDU MINORITY AND GUARDIANSHIP ACT.)
- A-8 Request for the Taking of Judicial Notice of Laws of India (to Trial Court)
- A-13 Decision of Court of Appeal (2nd Appellate District) (Division Two). Filed March 2, 1989.
- A-34 Judgment of Superior Court. Filed March 11, 1986.

- A-40 Statement of Decision (Findings)
of Trial Court Filed March 11, 1986.
- A-62 Interlocutory Judgment (of
Divorce). Dated September 16, 1980.
- A-65 Agreement of September 12, 1980 of
Parties re Custody and Visitation.
- A-66 Final Decree (of Divorce).
February 21, 1981.
- A-67 Order Dissolving Restraining
Orders of June 6, 1985.
- A-70 Amendment XIV. Section 1.

A-1

OFFICE OF THE CLERK

SUPREME COURT

STATE OF CALIFORNIA

May 23, 1989

SMITH & SMITH

LOS ANGELES, CA 90025

RE: RAYPUT, NEELAM

VS.

RAJPUT, SUKHJIT

2 Civil B 021070

Los Angeles NO. WED45665

THE COURT:

Petition for Review denied.

A-2

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION: 2 DATE: 03/21/89

SMITH & SMITH

Los Angeles, CA. 90025

RE: Rayput, Neelam

vs.

Rajput, Sukhjit

2 Civil B021070

Los Angeles NO. WED45665

THE COURT:

Petition for rehearing denied.

[DISTRICT COURT] IN THE COURT OF SHRI H.S.
MANDAIR . . . AMRITSAR (PUNJAB) [INDIA]

Application No. 45/85

Mrs. Raj Kumari Verma (applicant) versus
Sukhjit Kumar and others (Respondents)

Application under Section 8 of the Hindu
minority and guardianship act.

NOTICE TO MISS NEELAM K. RAJPUT - Ex wife
of Sukhjit K. Rajput - resident of 4316
Berryman Ave, Los Angeles, CA 90066 (USA)

Date of hearing 16.11.1985

Whereas the above applicant has filed
an application in the above cited case,
fixed for 16.11.1985. You are hereby
directed to appear in this court on
16.11.1985 at 10 AM for reply/objection
personally or through counsel failing which
ex parte proceedings shall be taken.

Enclosed copy of application/Clerk of

Court/Office of the Senior Sub Judge/
29/10/85 (seal)

Case No.45/85 under section 8 of the
Hindu Minority and Guardianship Act.

Next date of hearing: 16.11.1985. Sir,

1. That the above cited case is pending in this honourable court and is fixed for 16.11.1985 for the service of respondent Neelam K.Rajput.

2. That the applicant Raj Kumari Varma, has come to know that some judicial proceedings are going on in the United States Courts, between Sukhjit K.Rajput and Neelam K.Rajput respondent No. 2.

3. That the applicant has also come to know that the marriage between Sukhjit K.Rajput and Neelam K.Rajput has been dissolved by the court in USA, by way of divorce. Sukhjit has obtained the final

decree of divorce against Neelam . . .

4. That after passing the decree of divorce, between the parties, the welfare of two minor childrens Sunil Kumar Rajput and Harish Kumar Rajput who are living and studying in India under the supervision of the applicant is very much needed and their future is very much involved in the matter, the future of the two minor two children is not safe in the hands of Neelam K.Rajput who is the divorced wife of Sukhjit K.Rajput, the applicant Raj Kumary very is efficiently looking the interests of the minors and the minors are very happy with the applicant. The respondent Neelam K.Rajput knows very well and she has got full knowledge that the two minor children aforesaid born out of wedlock between Sukhjit K.Rajput and Neelam K. Rajput that

the children are studying in India and are living with the applicant and the applicant is protecting the rights of the minors, the applicant has not received any amount either in cash or by way of gift from Mrs. Neelam K.Rajput or Surjit K. Rajput from USA for the expenditures on the minors. The applicant has been spending the money on the children from her own sources and without any demand from Surjit K.Rajput and Neelam K.Rajput. Neither Neelam K.Rajput nor Surjit K.Rajput have ever sent any money from their income from USA in India for the expenditures incurred on the minors. The applicant has not received any money from them so far. She is giving better lives and education to the children as their close relations, i.e., their father's real sister that why the applicant

has applied in this honourable court for the appointment of the guardian to the application of the minors under section 8 and 9 of the Hindu Minority and Guardianship act without any greed or lust.

5. That Ms Neelam K.Rajput the Ex Wife of Sukhjit Rajput is having full knowledge of the proceedings pending in this honorable court. She knows very well that the present proceedings under section 8 of the Hindu Minority and Guardianship act and Neelam K.Rajput is one of the respondents in the aforesaid case. She is also aware of the facts that Surjit K.Rajput has already attended the proceedings in the court personally after visiting from USA and he appeared on the last date of hearing through S. R. Bindra, Advocate, Amritsar.

/ss/Seal

[REQUEST FOR THE TAKING OF JUDICIAL
NOTICE OF LAWS OF INDIA FILED
DECEMBER 1, 1985]

Plaintiff/Petitioner NEEDAM also submits for the court's inspection the books which are presently on loan from the Los Angeles County Law Library from which copies were made. Said books are identified by the library as follows:

1. All India Reporter, Ltd., Civil and Criminal, 4th Edition, V. R. Manohar, Advocate, W. Ohitaley, LL.B., Vol. XX.
2. Principles of Hindu Law and Statutory Enactments, Annotated, 4th Edn., 1970, Volume II, M.N. Srinivasan.
3. Introduction to Modern Hindu Law, Duncan M. Derrett. Oxford Press, 1963.

UNDER INDIA LAW THE INDIA COURT
IS WITHOUT JURISDICTION OVER THE MINORS

. . . . A brief review of the Minority and Guardianship Act of India shows that if any such [Guardianship] proceedings or responses were filed in India, under India law no jurisdiction of the minors is present. Said Act also shows clearly that if any such proceedings have been filed, or any responses made therein, of necessity, they had to have been accompanied by a bodyguard of lies and collusion to elicit an award of guardianship in a stranger. Petitioner directs the court's attention specifically to the Guardians and Wards Act, 1890, Act VIII of 1890, A.I.R. Manual, #1, attached, as follows:

Section 7 (15) stating:

"The Court has no jurisdiction to appoint a

guardian of the person of a minor whose father is alive and is not unfit to be the guardian of the person of a minor. . . "

Principles of Hindu Law and Statutory Enactments, Annotated, #2, attached:

Chapter 10, Sec 3:

"3. Natural guardians: ...the father is the natural guardian of the minor's person and separate property and in his absence the mother fulfills that role."

Section 6:

"Natural Guardians of a Hindu Minor.

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are--

a) In the case of a (sic) boy or an unmarried girl--the father, and after him,

the mother..."; Introduction to Modern Hindu Law. #3 attached:

".....The father however cannot be deprived of his guardianship so long as his conduct does not positively unfit him for the responsibility. And while he is not unfit no guardian can be appointed in his place." ...

Even if, arguendo, the allegations of the existence of such proceedings are taken to be true, and SUKHJIT is believed to have appeared in said proceedings in October, 1985, the quoted Codes and Statutes show that misrepresentations were made to the India Court. Before a guardian can be appointed the court must find: that the father, if living, is unfit; that the India Court has no jurisdiction to appoint a guardian (if SUKHJIT did in fact appear in

A-12

said proceedings, and did in fact state the truth, i.e., that he is a fit person for care of the children); that in order for the India Court to have appointed a guardian, the court must have been led to believe that not only was SUKHJIT unfit, but that the next appropriate party, the "natural guardian" mother, NEELAM, was unfit/deceased. . . ."

November 27, 1985

/ss/ ANN L. Smith

A-13

NOT FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

| | | |
|-----------------|---|-----------------|
| NEELAM RAJPUT, |) | NO. B021070 |
| |) | (Super. Ct. No. |
| Appellant, |) | WED45665 c/w |
| |) | D017535 and |
| v. |) | WEC93884) |
| |) | |
| SUKHJIT RAJPUT, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

APPEAL from a judgment of the Superior
Court of Los Angeles County. Leonard S.
Wolf, Judge. Affirmed.

[Filed March 2, 1989]

In 1984, Neelam Rajput (wife) commenced a civil lawsuit to set aside a marital dissolution which she claimed was obtained three years earlier by Sukhjit Rajput (husband) through alleged extrinsic fraud. She also filed her own petition for marital dissolution and received certain ex parte temporary restraining orders against husband. He in turn filed a motion to quash wife's petition for dissolution of marriage. The trial court consolidated the matters and, following a lengthy trial, ruled that husband's 1981 marital dissolution was valid. It then granted his motion to quash and made various rulings concerning spousal support and child custody. Wife now appeals from the judgment.^{1/} We affirm.

The record reveals that the couple was

married on October 12, 1973, in India. In 1974, a son, Sunil was born. The following year husband immigrated to the United States, found employment, and thereafter made semi-annual trips to India to visit his family. In 1976, the couple had another son, Harish, also born in India.

Two years later, wife and Sunil joined husband in Los Angeles. Because it was more economical to raise the children in India, Sunil was soon sent back to live with his brother at the home of husband's sister and parents.^{2/} Since the couple's relocation here, husband has made a number of trips to India; although wife, for financial reasons, has not been able to accompany him. Moreover, wife has had little telephonic communication with the children because husband's family does not

have a phone.

In March 1980, husband, appearing in propria persona, filed a petition for marital dissolution in which he sought exclusive custody of the minor children. It alleged that the couple had separated in July 1979, the same month that wife arrived in the United States. Husband served the legal papers on wife by mail at their home, whereupon she signed a Notice and Acknowledgment of Receipt of the pleading. Wife failed, however, to make an appearance in the proceeding. On September 12, 1980, she signed a notarized document, entitled "Agreement of Neelam Kumari Rajput," which purportedly gave custody of the children to husband with the condition that wife would be permitted reasonable visitation rights. Following the entry of wife's default, the

trial court rendered a decree of Final Judgment of Dissolution of Marriage on February 2, 1981. On the next day, the clerk of the court mailed a Notice of Entry of Judgment addressed to the couple's home.

Throughout the aforementioned events, and for the subsequent three and a half years, the couple not only resided together, but also maintained a joint bank account. Then, in September 1984, husband vacated the couple's residence. On March 26, 1985, wife filed her Petition for Dissolution of Marriage, seeking child custody, child and spousal support, determination of property rights, and attorney's fees and costs. On the same date, she obtained ex parte orders directing husband to arrange for the transportation of the children from India

to California. The order also restrained husband from disbursing funds from the couple's joint bank account.

Husband filed his responsive pleading to the petition and also made a motion to quash wife's dissolution proceeding. At the same time, wife initiated a civil action, alleging extrinsic fraud, which sought to set aside the 1981 marital dissolution on the ground that husband had misrepresented the legal significance of the proceedings. The complaint also contained her application for a preliminary injunction seeking the same relief granted in the earlier temporary orders.

Thereafter, the trial court consolidated the matters. On May 31, 1985, it denied wife's motion for a preliminary injunction and dissolved the temporary

restraining order against husband. At the conclusion thereof, the court found the 1981 marital dissolution to be valid, granted husband's motion to quash, and ruled in favor of husband in the civil action.

The court also determined that it lacked subject matter jurisdiction over the children living in India to commence custody proceedings. It further held that money deposited by wife into the joint bank account had been exhausted by the couple for her support and maintenance while they continued to live together outside of marriage. Moreover, it found that monies held in husband's name as of September 1, 1985, were his own separate property. The court also denied wife's claim that she was a putative spouse.

The court furthermore modified the 1981 dissolution judgment to reserve jurisdiction over the couple and ordered husband to begin paying spousal support in the sum of \$250 per month. It also ordered husband to pay wife's attorney's fees and to finance her trip to India so that she could represent her interests in child custody proceedings initiated in that country. Finally, the court ruled that the couple's settlement agreement bestowing physical custody of the children to husband was void.

We begin our discussion with wife's contention that the trial court erred in finding that it lacked subject matter jurisdiction to determine the issue of child custody.

In California, subject matter

jurisdiction to decide, initiate or modify custody orders is controlled by the Uniform Child Custody Jurisdiction Act (UCCJA; Civ. Code, §§ 5150-5174). This legislation encompasses international child custody disputes as well as controversies involving parties in different states. (See Miller v. Superior Court, (1978) 22 Cal.3d 923, 928; Plas v. Superior Court, (1984) 155 Cal.App.3d 1008; see also In re Marriage of Ben-Yehoshua, (1979) 91 Cal.App.3d 259, 264.)

Moreover, "[p]ersonal jurisdiction over the parties [under the UCCJA] did not give a California court subject matter jurisdiction of the custody issue." (In re Marriage of Hopson, (1980) 110 Cal.App.3d 884, 892; In re Marriage of Ben-Yehoshua, supra, at pp. 264-265.) Nor can the

litigants confer subject matter jurisdiction to a state simply by stipulation. "'The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction.'" (In re Marriage of Ben-Yehoshua, supra, at p. 264.)

The sole method for determining whether California can exercise subject matter jurisdiction in child custody proceedings is found in Civil Code section 5152. In summary, a court competent to hear child custody matters can assume jurisdiction under the statute if one of the following is found true: ". . . (a) the state is the child's home state ^[3/] when

the proceeding commences or within six months of such commencement; (b) the child and his parents, or the child and at least one contestant, have a significant connection with the state and there is available in the state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; (c) the child is physically present in the state and has been abandoned or threatened with mistreatment; or (d) no other state would have jurisdiction under the above provisions, or another state has declined to exercise jurisdiction as an inappropriate forum, and it is in the best interests of the child that the court assume jurisdiction." (In re Marriage of Fox, (1986) 180 Cal.App.3d 862, 872.)

Here, unless the court or country

where the children reside lacks jurisdiction over them, or declines to exercise it, the children must have some minimal connection with California before its courts can render a child custody decree. It is not enough that both parents are present here.

In the instant case, the trial court specifically found "(a) As respects the issue of child custody, both minor children reside in India with their aunt [husband's sister] and grandparents. The older child, Sunil, was in the United States for a few months during the year 1979. The custodial aunt in India has apparently instituted guardianship proceedings in India, the exact nature of which is unknown to the court. [¶] (b) The court concludes that India is the home state of the children

within the meaning of Civil Code section 5152 and that neither child has any significant connection with this state. . .

. [T]he fact that the parents have a significant connection with the state is insufficient to meet the statutory requirement. [¶] (c) India is the forum which would provide the optimum access to relevant evidence concerning the children and their family and it would therefore be in the best interests of the children that custody be determined in India. The India court has access to the children, can make an appropriate evaluation of their living conditions and can best determine whether the children would be better served to have custody removed to their parents in the United States."

Wife contends that Civil Code section

5152 is not controlling when both parents live in the same state and the children reside in a foreign jurisdiction. Under the facts of the case, we cannot agree. One of the stated purposes of the UCCJA is to "[a]ssure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state." (Civ. Code § 5150, subd. (c).)

Under these undisputed facts, we cannot say that the trial court abused its

discretion in ruling that India is the proper forum to resolve this custody matter. (See In re Marriage of Fox, supra, 180 Cal.App.3d 862, 870.) The children have resided in India with their father's extended family for their entire lives. Only Sunil has visited this country, and that was for a short period of time. Their contacts with California are tenuous at best. Those witnesses who are in the best position to testify concerning the care, protection, training, and personal relationships of the children are in India.

Next, wife attacks the trial court's findings that the 1981 marital dissolution was valid and that she was not a putative spouse. Her position is without merit. She concedes on appeal that the evidence was conflicting. It is, of course, a

fundamental principle of appellate review that it is the province of the trial court to resolve conflicts in the evidence and to determine the credibility of witnesses. When two or more inferences can be reasonably drawn from the facts, the reviewing court is without power to substitute its deductions for those of the trier of fact. (Stevens v. Parke, Davis & Co. (1973) 9 Cal.3d 51, 67; Nestle v. City of Santa Monica, (1972) 6 Cal.3d 920, 925-926.)

Wife further asserts that the trial court undermined her ability to finance her legal proceedings by dissolving the temporary restraining order forbidding husband from withdrawing money from the joint bank account. She also urges that husband's attorney should return \$10,300 in

legal fees paid from her purported share of the bank account. There is no merit to either contention since the trial court specifically found that any monies wife deposited in the joint account had been expended for her benefit prior to the date husband moved from their residence.

Lastly, wife argues that the trial court prejudiced the prosecution of her claims by not bifurcating the proceedings to determine initially the financial position of the parties. This contention is also without merit in light of the trial court's finding that wife had no interest in the monies held by husband.

In the final analysis, no amount of extra funding would have benefited wife's California legal proceedings to secure custody of her children living in India.

A-30

Simply put, the children have insufficient contacts with this jurisdiction to confer subject matter jurisdiction. The proper forum for determining child custody is, and always has been, the courts of India.

The judgment is affirmed.^{4/}

NOT FOR PUBLICATION.

/ss/_____, J.
COMPTON

We concur:

/ss/_____, P.J.
ROTH

/ss/_____, J.
GATES

1. In 1986, wife attempted to appeal from certain intermediate orders made by the trial court in the proceedings below. We dismissed that appeal as being moot on December 30, 1986, because wife had concurrently filed an appeal from the final judgment in this matter.

Presently, wife again appeals from various pendente lite orders. Those orders, which were nonappealable, have merged into the judgment and are now reviewable on appeal. (Reichert v. General Ins. Co. (1968) 68 Cal.2d 822, 825, fn. 1.) Wife, however, has also appealed from an order for temporary spousal support. That order, although interlocutory, was appealable when made. (In re Marriage of Skelley (1976) 18 Cal.3d 365.) Since wife failed to take a timely appeal from the

temporary spousal support order it cannot be reviewed on appeal from the final judgment. (Code Civ. Proc., § 906.)

2. On one other occasion, Sunil has returned to the United States to visit his parents; Harish has never been to this country.

3. Civil Code Section 5151, subdivision (5) defines home state as "the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as a parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other

period."

4. At trial, wife made a motion to the court requesting that it take judicial notice of child custody proceedings being conducted in India by husband's sister. The court denied the motion. On appeal, wife has made a motion to us for the same request. We also deny the motion.

SUPERIOR COURT COUNTY LOS ANGELES

| | | |
|--------------------|---|-----------------|
| NEELAM RAJPUT, |) | NO. WED 45665 |
| |) | No. WEC 93884 |
| Petitioner, |) | No. D 17535 |
| |) | (Consolidated) |
| vs. |) | |
| |) | |
| SUKHJIT RAJPUT, |) | |
| |) | |
| <u>Respondent.</u> |) | <u>JUDGMENT</u> |

This proceeding for dissolution of marriage, consolidated with the dissolution of marriage in 1981, and civil action for damages, came on regularly for hearing before the above entitled court on October 7, 1985, and concluded on November 25, 1985, Petitioner, NEELAM RAJPUT, herein after "Neelam", being represented by Mr. and Mrs. Chester Smith, attorneys at law, and Respondent SUKHJIT RAJPUT, herein after "Sukjjit", being represented by counsel, Larry C. Anderson. Evidence both oral and documentary having been presented by both

parties, the cause having been argued and submitted for decision, and the court, on request of Petitioner/Plaintiff, NEELAM RAJPUT, having caused to be made and filed herein its written statement of decision,

IT IS ORDERED, ADJUDGED AND DECREED;

1. Sukhjit Rajput's Motion to Quash Summons, Petition for Dissolution of Marriage and Order to Show Cause and Temporary Restraining Orders, in Case No. WED 45665, filed on April 11, 1985, and heard at the time of trial is granted.

2. Neelam Rajput's Petition for Dissolution of Marriage, Case No. WED 45665, and Order to Show Cause re Spousal and Child Support, Custody, Visitation, Attorneys Fees and Injunctive Relief, is moot and therefore dismissed.

3. Neelam Rajput's Motion to Set

Aside Default of Interlocutory and Final Judgments, filed July 29, 1985, is denied.

4. The 1980 Dissolution action Case No. D 17535, filed March 18, 1980 and the subsequent Final Judgment of Dissolution is valid.

5. The Interlocutory Decree in this Dissolution action, case No. D 17535 is modified to provide for the reservation of jurisdiction to award spousal support.

6. Neelam Rajput's Order to Show Cause re Spousal and Child Support, Custody, Visitation, Attorneys Fees and Injunctive Relief, Filed August 5, 1985, under the consolidated Case No. WED 45665, is treated as a modification of the existing dissolution, Case No. D 17535, and the court makes the following orders:

(a) Sukhjit Rajput is ordered to pay

as and for spousal support, the sum of \$250.00 per month, commencing January 1, 1986, and continuing on the first day of each calendar month thereafter until further order of the court.

(b) As and for additional spousal support, Sukhjit is ordered to make available to Neelam Rajput, a sum not to exceed \$5,000.00 for the sole purpose of providing her with transportation to and from India, maintenance in India, and the retaining of counsel in India to represent her interests in the guardianship proceedings affecting her children. The court reserves jurisdiction to determine the time and manner of payment of said amount.

(c) Sukhjit is ordered to pay counsel for Neelam Rajput, as and for

attorneys fees the sum of \$3,500.00, payable \$300.00 per month commencing January 1, 1986, as his contributive share of attorneys fees.

(d) This Court has no jurisdiction pursuant to Civil Code Section 5152 to make a child custody and visitation determination as respects the minor children of the parties.

(e) The provisions in the Interlocutory Decree of September 16, 1980 purporting to award custody of the minor children to Sukhjit Rajput, with reasonable visitation rights to Neelam Rajput, is void and of no force and effect.

7. With regard to the Civil Action, Case No. WEC 93884, judgment is entered in favor of Sukhjit Rajput on each and every cause of action. As such, Neelam Rajput

shall take nothing by way of her complaint,
and Sukhjit Rajput shall recover costs of
suit.

8. A copy of this judgment shall
be filed in each of the actions
consolidated under case no. WED 45665.

DATED: March 11, 1986

/ss/ Leonard S. Wolfe
LEONARD S. WOLFE, JUDGE

WED 45665/Rajput/Consolidated

STATEMENT OF DECISION FILED MAR 11, 1986

". . . . The Court makes the following findings relative to the controverted issues set forth in petitioner's request for statement of decision filed December 16, 1985, as follows:

1. The parties were married on October 12, 1973, in India. The parties have two children of the marriage, identified as follows:

| <u>NAME</u> | <u>BIRTHDATE</u> | <u>AGE</u> | <u>SEX</u> |
|---------------------|------------------|------------|------------|
| SUNIL KUMAR RAJPUT | 9/15/74 | 11 | M |
| HARISH KUMAR RAJPUT | 11/7/77 | 08 | M |

2. The court concludes that the marriage of the parties was terminated on February 2, 1981 with the entry of the final decree in case no. D 17535.

3. The parties separated on March

18, 1980. On March 18, 1980, Sukhjit filed a dissolution of action against Neelam, Case No. D 17535. At the time of this filing, Sukhjit agreed that he would support Neelam until she was able to support herself. Neelam signed an acknowledgment of receipt form, acknowledging service upon her of the dissolution proceeding documents and she caused to be prepared and signed a child custody agreement. She did not appear in the dissolution proceeding and an interlocutory decree was entered by default. The final decree was entered on February 2, 1981. Neelam was not fluent in English in 1980 and in 1983 but had a sufficient command of the English language during those times to enable her to understand the nature of the various

documents she signed in connection with these dissolution proceedings.

4. The parties have been separated since the date of filing of the dissolution action on March 18, 1980, by Sukhjit.

5. Neelam told her father-in-law, her sister-in-law, and a family friend in the years 1981 and 1982 that she and Sukhjit were divorced and expressed to them a desire to effect a reconciliation. The parties did not reconcile prior to the entry of a final decree. Neelam knew that her marriage was dissolved in 1981 and any sexual acts in which she engaged with Sukhjit were consensual on her part. Consequently, Neelam is not a putative spouse within the meaning of Civil Code section 4452.

6. Neelam is entitled to have the

interlocutory decree in the dissolution action, case no D 17535 modified so as to provide for the reservation of jurisdiction to award spousal support in accordance with the agreement by Sukhjit to provide for her support and maintenance until she became self supporting. With respect to case no. D 17535, the court orders that the interlocutory judgment be modified to provide for a reservation over the issue of spousal support. Therefore, the court finds that Neelam has a need to receive and Sukhjit has the ability to pay the sum of \$250.00 per month as and for spousal support commencing January 1, 1986, and continuing on the first day of each calendar month thereafter until further order of the court.

6.1 As additional spousal support,

Sukhjit is ordered to make available to Neelam a sum not to exceed \$5,000.00 which is to be utilized by Neelam solely for the purpose of providing her with transportation to and from India, maintenance while in India, and the retaining of legal counsel in India to represent her interests in any guardianship proceedings affecting her children. The court reserves jurisdiction to determine the time and manner of payment of the said amount.

7. The court finds that during the period of time that the parties lived together between 1979 and 1983, Neelam gave Sukhjit her salary checks. The checks were deposited in a joint bank account and the proceeds of the salary checks which Neelam gave to Sukhjit were utilized by Sukhjit in

their entirety for her support and maintenance.

8. In 1983, Sukhjit purchased an undivided one-half interest in a condominium. Neelam signed documents so as to cause the property to be conveyed to Sukhjit as an unmarried man and relinquished all of her right, title and interest in the property. Sukhjit continues to own an undivided one-half interest in the condominium but has little or no equity in the property. Neelam was not fluent in English in 1980 and in 1993 but had a sufficient command of the English language during those times to enable her to understand the nature of the various documents she signed in connection with the condominium transaction.

9. Monies held by Sukhjit in his

name as of September 1, 1985 are his separate property since the marriage was dissolved on February 2, 1981.

10. The credit cards held by the parties are not classified as property of the parties. Neelam ignores the fact that a liability follows this asset and this remains simply a contracted interest with the creditor. Loans made by a party after separation are the debts of the party making said loan. Neelam seeks to have access to the line of credit without taking responsibility for the liability which must necessarily follow. Thus Neelam has no community interest in any available line of credit typified by a credit card and used by Sukhjit.

11. The parties entered into an oral property settlement agreement in 1980,

which provided that the parties would continue to reside in the same residence and Sukhjit would continue to provide the support of Neelam until she became self supporting.

12. For the reasons stated in paragraph 7, supra, the court finds that the earnings of the parties were used for their support and maintenance.

13. The testimony of the parents is in conflict as to the desire of the children. Neelam says the children want to come to the United States. Sukhjit states that the children desire to remain in India. The living conditions of the children in India, their education, friends, and activities are all totally unknown to the court. Neelam and Sukhjit have resided in California since 1979.

14. The issue as to whether or not the children should reside in Los Angeles is not properly before this court in that it turns upon the court's ability to resolve said conflict, for which it has no jurisdiction on the following basis:

(a) As respects the issue of child custody, both minor children reside in India with their aunt (Sukhjir's sister) and grandparents. The older child, Sunil, was in the United States for a few months during the year 1979. The custodial aunt in India has apparently instituted guardianship proceedings in India, the exact nature of which is unknown to the court.

(b) The court concludes that India is the home state of the children within the meaning of Civil Code section 5152 and

that neither child has any significant connection with this state. The fact that both parents reside in California is sufficient to establish that the parents have a significant connection with this state. Civil Code section 5152, subsection (1) (b), requires that either child and his parents, or the child and one of the contestants have a significant connection with this state. Thus the fact that the parents have a significant connection with the state is insufficient to meet the statutory requirement.

(c) India is the forum which would provide the optimum access to relevant evidence concerning the children and their family and it would therefore be in the best interests of the children that custody be determined in India. The India court has

access to the children, can make an appropriate evaluation of their living conditions and can best determine whether the children would be better served to have custody removed to their parents in the United States.

(d) For the reasons above stated, jurisdiction of this court to determine custody has not been established. Even if it were established, this court would not exercise its jurisdiction pursuant to Civil Code section 5156, subsection (3) (a), (b), and (c).

(e) At the time Sukhjit filed his dissolution action in March, 1980, and at the time of the default hearing in September, 1980, the Court had no jurisdiction pursuant to Civil Code section 5152 to make a child custody determination

as respects the minor children of the parties. Neither the child custody agreement entered into by the parties, nor Sukhjit's petition to the Court for an award of custody could cause or did cause the Court to acquire such jurisdiction. The provisions in the Interlocutory decree of September 16, 1980, purporting to award custody of the minor children to Sukhjit, with reasonable visitation rights to Neelam is void and of no force and effect.

15. For the reasons stated in paragraph 14, supra, the court has declined to take jurisdiction of the issue of child custody, as such, the issue of whether or not Neelam has been denied access to the minor children cannot be determined by this court. Nevertheless, the testimony relative to this issue is in conflict, at best.

16. As stated hereinabove, in paragraph 6(a), the court has reserved jurisdiction to decide the time and manner in which Neelam will receive monies to travel to India for the purpose of defending herself and her children in the legal proceedings there as to guardianship of the minor children.

17. Since this court declines to exercise jurisdiction over the issue of child custody, it is not necessary to address the issue of whether Sukhjit should be ordered to bring the minor children to the United States.

18. The court cannot determine what is meant by "regular monies" with regard to the support of the minor children. For the reasons stated in paragraph 14, supra, the court cannot determine this issue. However

there was testimony that both parties sent money to India for support of the minor children.

19. Since a basis for this court to exercise jurisdiction over the issue of child custody has not been established nor accepted by the court, it is not necessary to address the issue of whether or not Neelam is a fit mother. However, the court notes that both Neelam and Sukhjit appear to be fit and proper persons to have custody of the children.

20. Since a basis for this court to exercise jurisdiction over the issue of child custody has not been established nor accepted by the court, it is not necessary to address the issue of whether or not Sukhjit is a fit father. However, the court notes that both Neelam and Sukhjit

appear to be fit and proper persons to have custody of the children.

21. Since a basis for this court to exercise jurisdiction over the issue of child custody has not been established nor accepted by the court, it is not necessary to address the issue of whether or not Sukhjit represented to the Indian court that Neelam is a fit mother. However, the court notes that both Neelam and Sukhjit appear to be fit and proper persons to have custody of the children.

22. Since a basis for this court to exercise jurisdiction over the issue of child custody has not been established nor accepted by the court, it is not necessary to address the issue of whether or not Sukhjit is a fit father. However, the court notes that both Neelam and Sukhjit

appear to be fit and proper persons to have custody of the children.

23. The determination of fraud in the Indian court proceeding filed subsequent to the filing of all actions hereto, is not before this court and it is not required for determination of the merits of the cases and causes of action at bar. However, if such foreign action was relative to determination of issues there has been insufficient evidence to support a contention of fraud in any action brought by Neelam.

24. Sukhjit is ordered to pay counsel for Neelam as and for attorney's fees the sum of \$3,500.00, payable \$300.00 per week commencing January 1, 1986, as his contributive share of attorneys fees.

25. For the reasons stated in

paragraph 7, supra, no accounting is necessary.

26. There was no testimony as to whether or not the parties engaged in sexual relations to March, 1984. As stated in paragraph 5 sexual relations, if any, were consensual on the part of both parties.

27. As stated in paragraph 5, supra, there was no reconciliation.

28. As stated in paragraph 5 sexual relations, if any, were consensual on the part of both parties. There is no testimony other than the consensual touching by either of the parties and as Neelam is found to have knowledge of the dissolution her consent was not obtained by fraud.

29. As answered in paragraph 7 and

subsequent paragraphs, Neelam is not entitled to reimbursement of any monies, with or without interest.

30. The court finds the 1980 dissolution action filed on March 18, 1980, to be valid, and that there was no extrinsic fraud perpetrated by Sukhjit. Sukhjit did not procure the 1981 final dissolution through fraud or deceit. Moreover, a party cannot confer jurisdiction. Jurisdiction must be established and accepted in order for the court to render judgment. As previously discussed in paragraph 14, supra, basis for jurisdiction was not established, and if established, the court finds that it would not accept jurisdiction.

31. In light of the fact that Sukhjit is entitled to judgment on each of

the causes of action set forth in the civil complaint which Neelam filed against him in Case No. WEC 93884, Neelam is not entitled to any damages whatsoever.

32. The parties distributed the community property by way of an oral agreement at the time of the 1981 dissolution. As such there is no undistributed community property before this court for distribution.

33. The 1981 dissolution did not seek any confirmation of separate property. The marriage of the parties having previously been dissolved, Sukhjit's Motion to Quash Neelam's petition for dissolution is granted. Neelam's petition for dissolution, case no. WED 45665, is moot and therefore must be dismissed. As such there is no separate property issue before

this court.

34. For the reasons discussed at length in paragraph 14, supra, this court's jurisdiction has not been established nor accepted by the court as such, the issue of proper award of custody and visitation need not be addressed by this court.

35. For the reasons stated in paragraph 7, and subsequent paragraphs, the monies taken by Sukhjit from his accounts at Bank of America and First Interstate Bank, in 1985, were his separate property in which Neelam has no interest.

36. There was no testimony and no determination that community assets were used to pay attorneys fees. Loans made by one party after separation are the debts of the party making said loans. A line of credit typified by a credit card is simply

an access to credit with its attendant liability. In the case at bar, Sukhjit used his line of credit and is responsible for the indebtedness thereby incurred. Neelam apparently seeks to divide the proceeds of the loan and ignore the liability of the loan. Such a position has no merit.

37. There was no disposition of more than 50% of the net worth of the community property by Sukhjit and/or his attorneys.

38. The court declines to speculate as to appropriate custodial orders it would have made if it had accepted jurisdiction, as this issue is moot.

The judgment in this cause will be entered in accordance with the foregoing

A-61

statement of decision.

DATED: MAR 11, 1986

/ss/LEONARD S. WOLFE, JUDGE

A-62

SUKHJIT K. RAJPUT

(213) 397-2991

4316 Berryman, Los Angeles, CA 90066

Attorney for (Name) PETITIONER IN PRO PER

SUPERIOR COURT OF CALIFORNIA, LOS ANGELES

PETITIONER: SUKHJIT K. RAJPUT

RESPONDENT: NEELAM KUMARI RAJPUT

INTERLOCUTORY JUDGMENT D017535

OF DISSOLUTION OF MARRIAGE

1. This proceeding came on for ☒ default or uncontested ☐ contested hearing as follows

a. Date: Sep 16 1980

b. Judge (name): ROGER L. MALKUS

c. ☒ Petitioner present in court ☐
Attorney present in court (name)

d. ☐ Respondent present in court ☐
Attorney present in court (name)

2. The court acquired jurisdiction of the
respondent on (date): 3/31/80

a. X | Respondent was served with process

b. L | Respondent appeared.

3. THE COURT ORDERS

a. An interlocutory judgment be entered and the parties are entitled to have their marriage dissolved.

b. After six months from the date the court acquired jurisdiction of the respondent a final judgment of dissolution may be entered upon proper application of either party or on the court's own motion, unless a dismissal signed by both parties is filed. The final judgment shall include such other and further relief as may be necessary to a complete disposition of this proceeding, but entry of final judgment shall not deprive this court of its jurisdiction over any matter expressly

reserved to it in this or the final judgment until a final disposition is made of each such matter.

c. Jurisdiction is reserved to make such other . . . orders as . . . necessary to carry out . . . this judgment.

X | THE COURT FURTHER ORDERS

a. L | Wife's former name be restored (specify):

b. X | Other: It is further ordered that the care, custody and control of the minor children of the parties: SUNIL K. RAJPUT, born 9-15-74; and HARISH K. RAJPUT, born 11-7-77; be awarded to Petitioner; subject to the right of reasonable visitation which is hereby awarded to Respondent.

DATED: Sep 16 1980

/ss/ ROGER L. MALKUS

A-65

ADMITTED IN EVIDENCE DATE: 9/16/80

AGREEMENT OF NEELAM KUMARI RAJPUT . . .

Case No. D 017535

I, Neelam Kumar Rajput, born on March 13, 1953, agree to give the custody of our sons Sunil Kumar Rajput born on September 5, 1974, and Harish Kumar Rajput born on November 7, 1977, to my husband Mr. Sikhjit K. Rajput, on conditions that after we are divorced, I can visit my children in a reasonable period of time, for a reasonable period of time, and Mr. Sukhjit K. Rajput will not have any objections to my visiting them.

DATED: September 12, 1980

/ss/ Neelam Kumari Rajput

/ss/ Sukhjit K. Rajput

A-66

Filed: Feb. 2, 1981 Book 7692 Page 209

SUKHJIT K. RAJPUT (213) 397-2991

4316 Berryman, Los Angeles, CA 90066

Attorney for (Name) PETITIONER IN PRO PER

SUPERIOR COURT OF CALIFORNIA, LOS ANGELES

PETITIONER: SUKHJIT K. RAJPUT

RESPONDENT: NEELAM KUMARI RAJPUT

FINAL JUDGMENT X | DISSOLUTION OF

D 017535 MARRIAGE

1. The court acquired jurisdiction of the
respondent on (date): 3-31-80

2. THE COURT ORDERS

a. X | A final judgment of dissolution
be entered, and the parties are restored to
the status of unmarried persons. . .

and the parties are declared to be
unmarried persons.

Dated: Feb. 21, 1981

/ss/Billy Mills
JUDGE SUPERIOR COURT

A-67

ORDER OF JUNE 6, 1985 WED 45665

(Honorable David M. Rothman)

Petitioner, NEELAM RAJPUT'S Order to Show Cause re Preliminary Injunction and consolidation of actions and Respondent SUKHJIT RAJPUT'S Motion to Quash Summons and Petition for Dissolution came on regularly for hearing on May 31, 1985, before the Honorable David M. Rothman, Judge presiding. The Court having considered all of the pleadings and papers submitted and having heard oral argument and good cause appearing therefore:

IT IS ORDERED, ADJUDICATED AND DECREED:

1. Temporary Restraining Orders issued in Case No. WED 45665 are dissolved and vacated and Judge Raymond Choate's Order requiring return of the two minor

children SUNIL and HARISH RAJPUT is dissolved and vacated without prejudice.

2. The preliminary injunctions requested in Case No. WEC 093 884 pursuant to Order to Show Cause heard May 31, 1985, Case No. WEC 093 884 are denied without prejudice.

3. The following actions: Case No. D 017 535, Case No. WED 45665 and Case No. WEC 093 884 are consolidated under Case No. WED 45665; and

4. The Motion to Quash Summons and Petition for Dissolution of Marriage in Case No. WED 45665 and all other temporary restraining orders and relief from all other matters concerning setting aside complaint is continued to the date of trial on September 30, 1985 in Department A.

5. Petitioner, NEELAM RAJPUT, in

A-69

Case No. WED 45665 is to pay all costs of consolidation and transfer, if any.

DATED: June 6, 1985

JUDGE OF THE SUPERIOR COURT

AMENDMENT XIV SECTION 1

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. Larry Anderson
Attorney for Respondent
16168 Beach Blvd.
Suite 160
Huntington Beach, Ca.
92647

The Supreme Court of
California
3580 Wilshire Blvd.
Los Angeles, Ca. 90010

The Court of Appeal of
California
3580 Wilshire Blvd.
Los Angeles, Ca. 90010

Judge Leonard Wolfe
Judge, Superior Court
1725 Main Street
Santa Monica, Ca. 90401

The District Court
Hon. Shri Mandair
Amritsar, India

89-140 (2)

Supreme Court, U.S.

FILED

JUL 22 1989

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NEELAM RAJPUT,
Petitioner,

v.

SUKHJIT RAJPUT,
Respondent.

APPENDIX B TO
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
SECOND APPELLATE DISTRICT

CHESTER LEO SMITH
COUNSEL OF RECORD
12121 Wilshire Blvd., #1103
Los Angeles, CA 90025
(213) 476-6486
(ASSOCIATE COUNSEL: ANN SMITH)

3-782

APPENDIX B TABLE OF CONTENTS

| | |
|------|-------------------------------------|
| B-1 | Civil Code Section 5150 |
| B-3 | Civil Code Section 5151 |
| B-6 | Civil Code Section 5152 |
| B-9 | Civil Code Section 5153 |
| B-9 | Civil Code Section 5154 |
| B-11 | Civil Code Section 5155 |
| B-14 | Civil Code Section 5156 |
| B-19 | Deering's Civil Code Section 4600 |
| B-23 | Deering's Civil Code Section 4600.5 |
| B-29 | Deering's Civil Code Section 4700 |



B-1

APPENDIX B

STATE OF CALIFORNIA

CIVIL CODE SECTIONS 5150 TO 5156

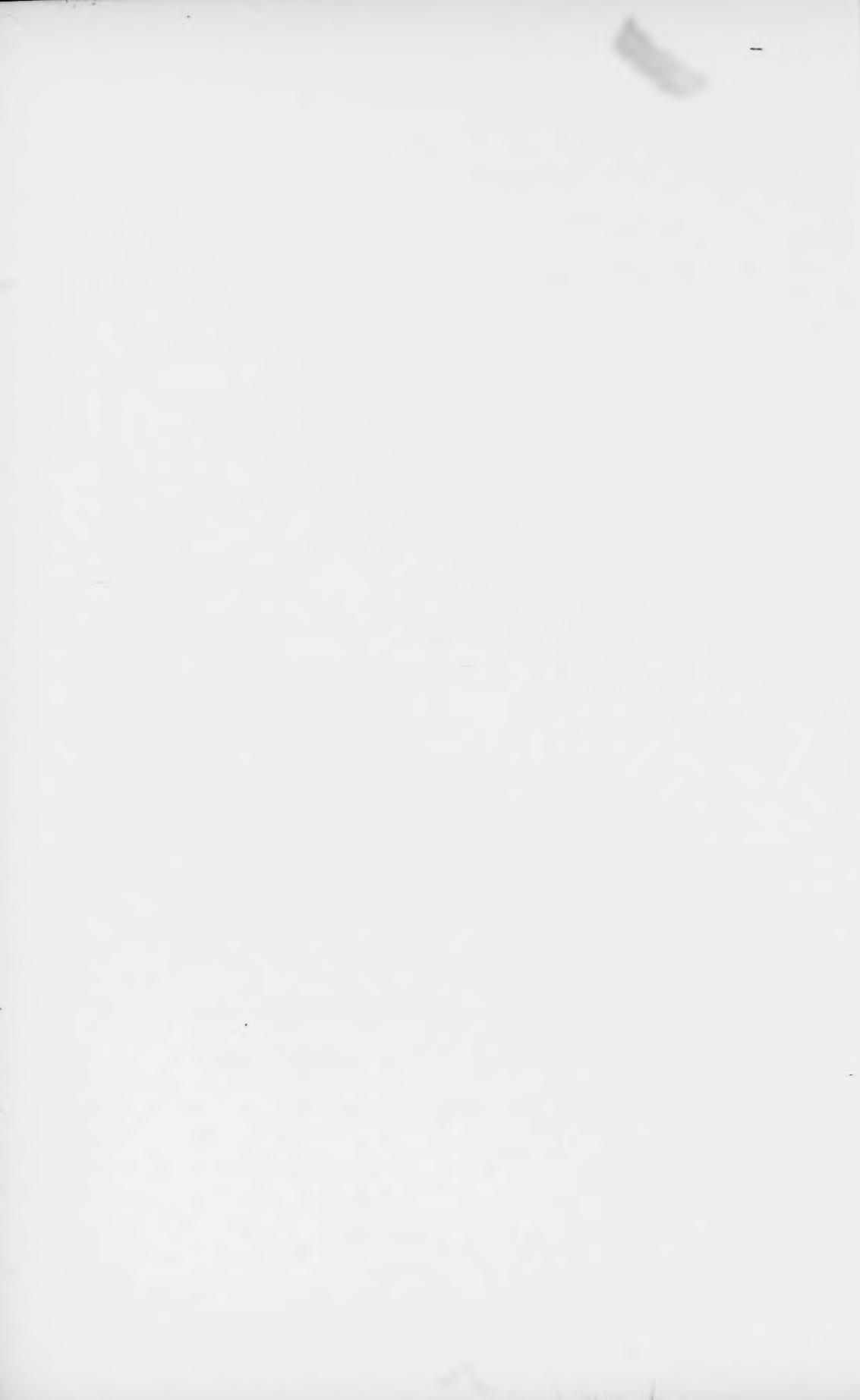
§5150. [Purpose of title]. (1) The

general purposes of this title are to:

(a) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which



B-2

the child and his family have a closer connection with another state.

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(f) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(g) Facilitate the enforcement of custody decrees of other states.

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with



the same child.

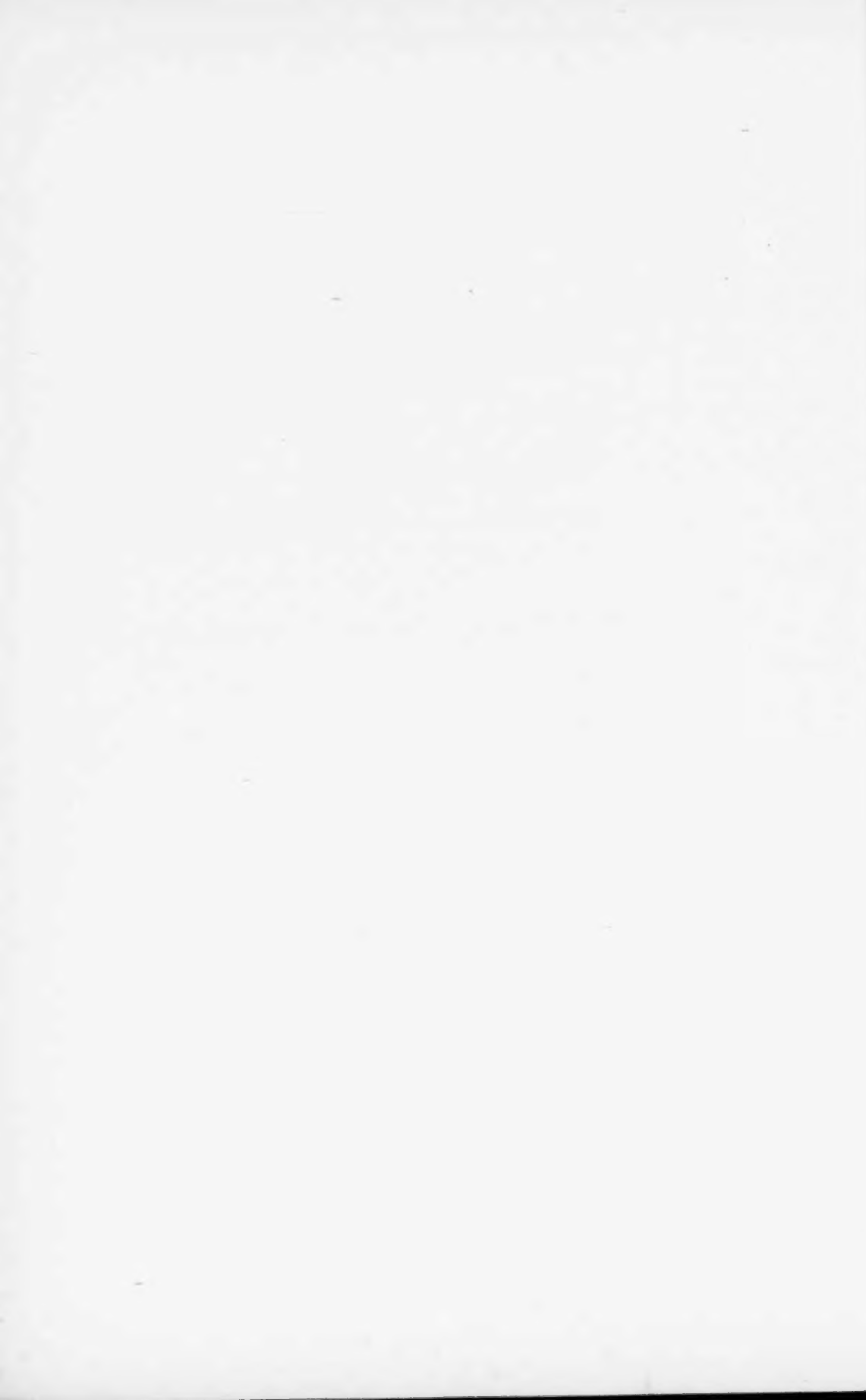
(1) To make uniform the law of those states which enact it.

(2) This title shall be construed to promote the general purposes stated in this section. [1973 ch 693 § 1.]

§ 5151. [Definitions.] As used in this title:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.



(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned.



Periods of temporary absence of any of the named parties are counted as part of the six-month or other period.

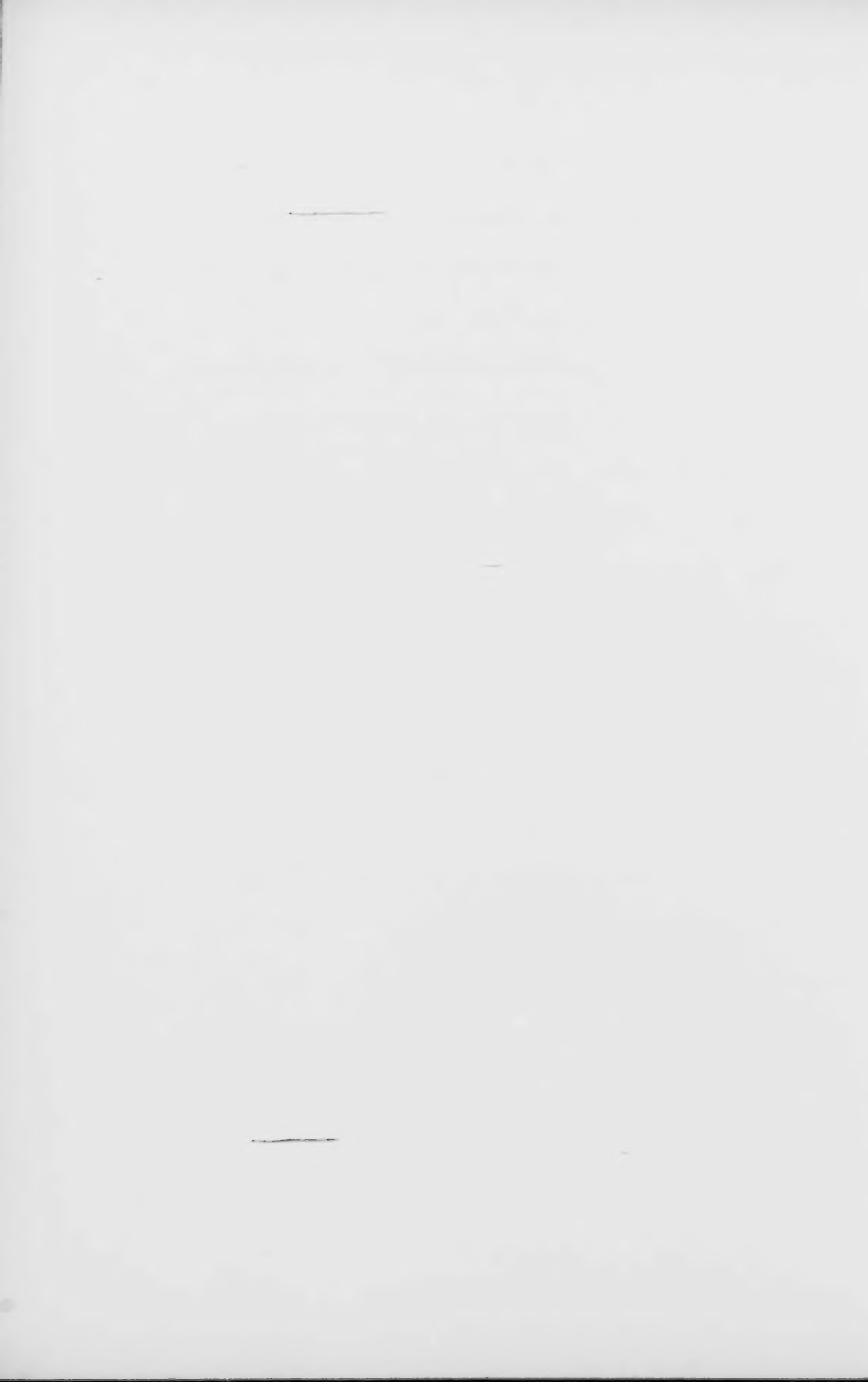
(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody.

(10) "State" means any state,

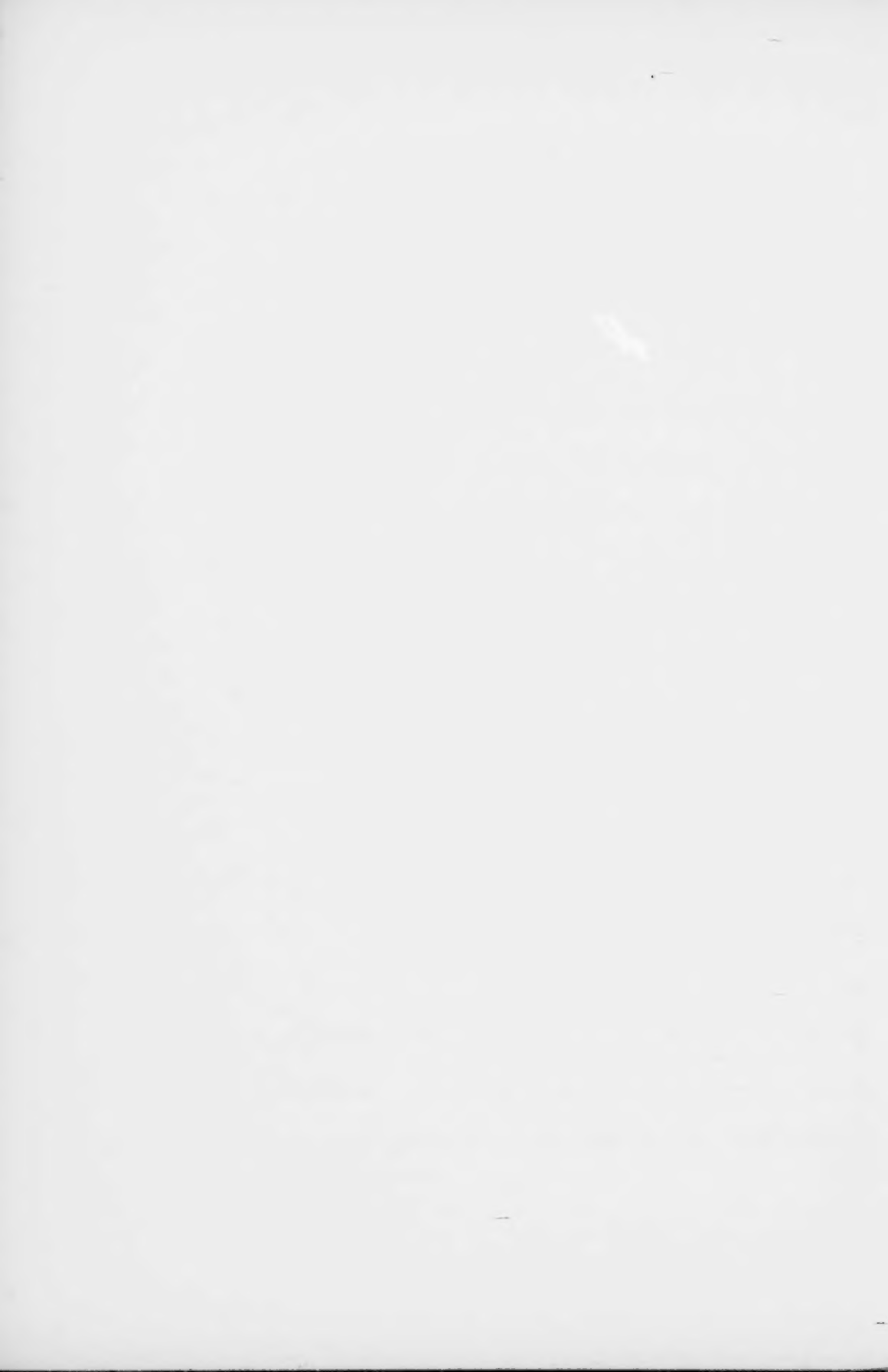


territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. (1973 ch 693 § 1.1

§5152. [Jurisdictional requirements.]

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody



or for other reasons, and a parent or person acting as parent continues to live in this state.

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.

(c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise

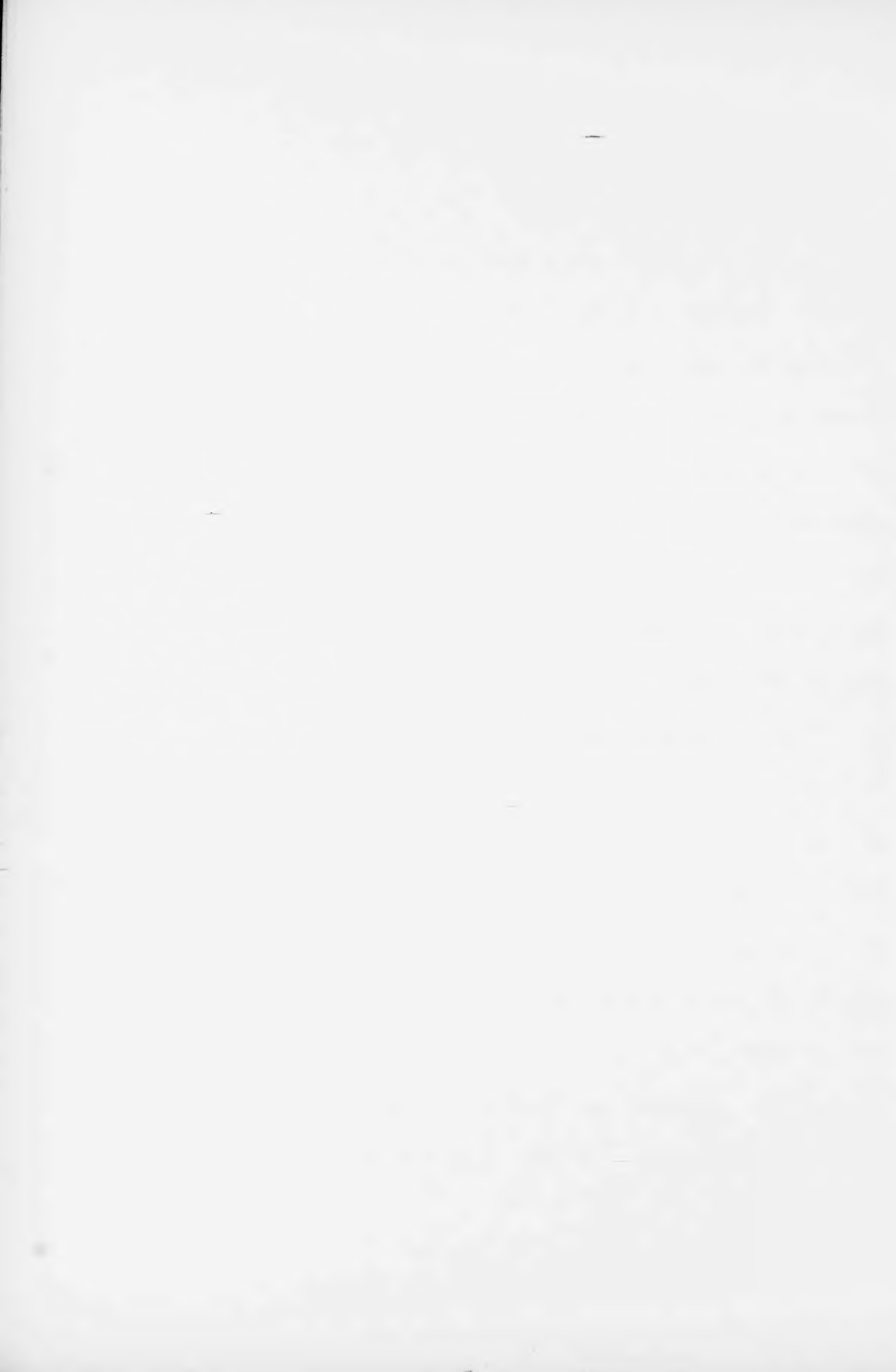


neglected or dependent.

(d) (i) It appears that no other state would have jurisdiction under prerequisites (a), (b), (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subdivision (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for



jurisdiction to determine his custody.

§5153. [Notice and hearing.] Before making a decree under this title, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to Section 5154.

§ 5154. [Notice outside of state.]

(1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(a) By personal delivery outside this state in the manner prescribed for



service of process in this manner.

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction.

(c) By any form of mail addressed to the person to be served and requesting a receipt.

(d) As directed by the court (including publication, if other means of notification are ineffective.)

(2) Notice under this section shall be served, mailed, delivered, or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the



manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court. [1973 ch 693 § 1.]

§ 5155. [Proceeding pending in another state.] (1) A court of this state shall not exercise its jurisdiction under this title if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction, substantially in conformity with this title, unless the proceeding is stayed by



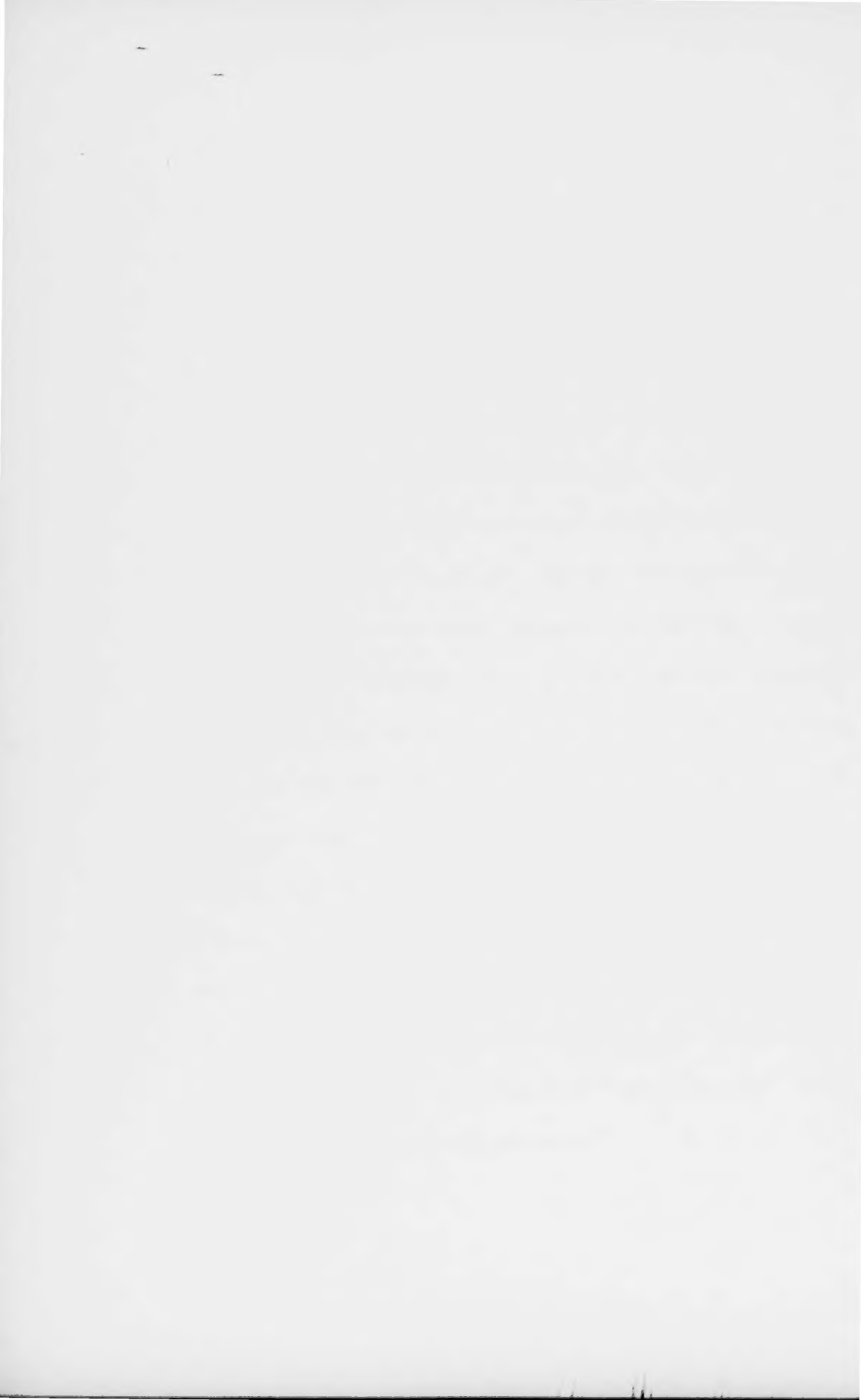
e court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under Section 5159 and shall consult the child custody registry established under Section 5156 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the

child was pending in another state before the court assumed jurisdiction it shall stay the proceedings and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 5158 through 5171. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform the court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

§ 5156. [Determination that another



state is more appropriate forum.] (1) A court which has jurisdiction under this title to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take



into account the following factors, among others:

(a) If another state is or recently was the child's home state.

(b) If another state has a closer connection with the child and his family or with the child and one or more of the contestants.

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state.

(d) If the parties have agreed on another forum which is no less appropriate.

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 5150.

(4) Before determining whether to



decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in the other named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.



(6) The court may decline to exercise its jurisdiction under this title if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceedings.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more



appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator for forwarding to the appropriate official.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.



DEERING'S CIVIL CODES

SECTIONS 4600 TO 4700

§4600. [Custody order: Consideration of child's wishes: Order of preference: Pleading and finding before award of custody to person(s) other than parent, and exclusion of public from hearing.] (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make

such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) Custody should be awarded in the following order of preference according



to the best interests of the child pursuant to Section 4608:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable

environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

§4600.5 [Joint Custody.] (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child subject to Section 4608 where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage.

(b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases, subject to the provisions of Section 4608. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to Section 4602.



(c) Whenever a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A statement that joint physical custody is, or is not, in the best interests of the child shall not be sufficient to meet the requirements of this subdivision.

(d) For the purposes of this part:

(1) "Joint custody" means joint physical custody and joint legal custody.

(2) "Sole physical custody" means that a child shall reside with and under the supervision of one parent, subject to the power of the court to order visitation.

(3) "Joint physical custody" means that each of the parents shall have significant periods of physical custody.



Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

(4) "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

(5) "Joint legal custody" means that both parents shall have the right and the responsibility to make the decisions relating to the health, education and welfare of a child.

(e) In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the

child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

(f) In making an order of joint physical custody, the court shall specify the right of each parent to the physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

(g) In making an order of joint physical custody or joint legal custody, the court may specify one parent as the

primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

(i) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

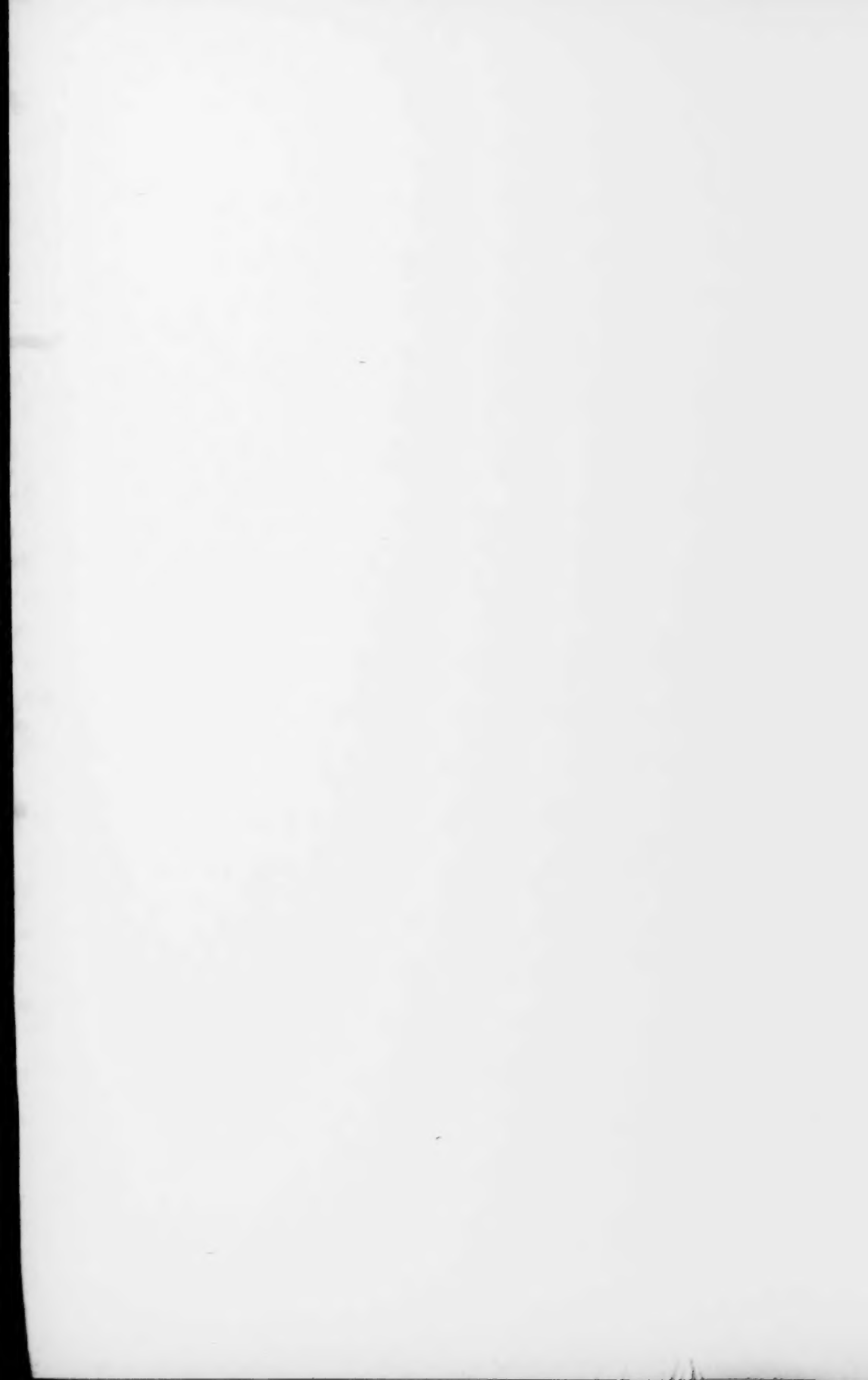
(j) Any order for the custody of a minor child of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be



modified at any time to an order of joint custody in accordance with the provisions of this section.

(k) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(l) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a child because that parent is not the child's custodial parent.



§4700. [Order for child support.]

(a) In any proceeding where there is at issue the support of a minor child or a child for whom support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents, to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any



debts owing to creditors. An order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date. An order of modification or revocation may include an award of attorneys' fees and court costs to the prevailing party.

(b) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise



emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make such payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may,



in its original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(c) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance and education of the child, as the court may deem just.



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action; my business address is 12121 Wilshire Boulevard, Suite 1103, Los Angeles, California 90025.

I served the following document described as

APPENDIX B TO
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

On July 23, 1989 in this action by mailing true copies in the number as required by the Rules of the Supreme Court, at a United States Postoffice of the United States of America, located in the State of California, enclosed in sealed postage



prepaid envelopes as stated on the attached mailing list. I declare I am a member of the Bar of the State of California and of the Bar of the Supreme Court.

I have mailed said copies to comply with the Rules of this Court, including Rule 28.

CHESTER LEO SMITH

Chester Leo Smith



Mr. Larry Anderson
Attorney for Respondent
16168 Beach Blvd.
Suite 160
Huntington Beach, Ca.
92647

The Supreme Court of
California
3580 Wilshire Blvd.
Los Angeles, Ca. 90010

The Court of Appeal of
California
3580 Wilshire Blvd.
Los Angeles, Ca. 90010

Judge Leonard Wolfe
Judge, Superior Court
1725 Main Street
Santa Monica, Ca. 90401

The District Court
Hon. Shri Mandair
Amritsar, India